



California Building Industry Association

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VIA EMAIL: dv_context@calwater.ca.gov

November 28, 2007

Hon. Phillip Isenberg, Chairman
Delta Vision Blue Ribbon Task Force
650 Capitol Mall, 5ht Floor
Sacramento, CA 95814

Re: Third Draft Vision, "Our Vision for the Delta" (Revised November 19, 2007) and Recommendations for Near Term Actions to Support the Vision for California's Delta

Dear Chairman Isenberg and Task Force Members:

Thank you for the opportunity to provide these comments on behalf of California's homebuilders as represented by the California Building Industry Association (CBIA). Over the past 2 years, CBIA has been engaged in legislative efforts to strengthen the tie between land use and flood risks, as well as efforts to share liability for flood damages.

In our view, the Third Draft and the Near Term Actions take a decidedly anti-housing approach, calling for a moratorium on new housing (partial listing):

1. "Protecting California's Delta from encroaching [sic]¹ urbanization is critical both to preserving its unique character and to ensuring adequate public safety and emergency response." (Third Draft, p. 8).
2. "New urban development should be restricted in flood prone areas, including areas below projected sea level, all areas of deep floodplains, and areas necessary for flood bypasses and floodplains." (Third Draft, p. 12).
3. "Housing development must be kept out of all flood-prone areas, including all areas below current or projected sea level and all areas in deep floodplains, whether within or outside of the existing delta primary zone...Delta floodplains are a fundamentally unsafe place for housing development even with new investments in levees." (Third Draft, p. 14).

¹ To encroach means to trespass upon the property, domain, or rights of another. It can hardly be said that to use ones own property is an encroachment upon another.

4. "New housing development cannot be allowed to compromise the flood protection for existing Delta residents and businesses." (*Id.*).
5. "The Task Force recommends that the state...disallow residential building in flood prone areas." (Near Term Actions, p. 3).
6. "The Governor should immediately issue an Executive Order that addresses new raw land development in the Delta by developing standards consistent with Delta Vision within two years. That Executive Order should apply to all lands within the contour of five feet above current sea level or some other geographically measured boundary which protects against negative effects of encroachment [sic] and projected sea level rise through 2100." (Near Term Actions, p. 5).
7. "The order should...prevent further encroachment [sic] on areas affected by sea level rise and river flooding." (Near Term Actions, p.5).

Such calls for a moratorium in flood prone areas were considered by the Legislature over the last two years and were rejected.² These ideas were rejected for many reasons, including:

1. New development provides funding for improvements and maintenance for levees that protect existing residents, when current levee improvement funding is inadequate;
2. Focusing on new residential development ignores the hundreds of thousands of existing residents, and non-residential buildings that currently exist in flood prone areas, including the state capitol, schools, hospitals, police and fire stations, shopping centers, office and industrial buildings; flood waters don't discriminate;
3. The financial impact on property tax revenue of a building moratorium.

Accordingly, it is incorrect to refer to efforts by the Governor and the Legislature as efforts "to keep people and development out of flood prone areas." (Near Term Actions, p. 1).

Instead, the Legislature took a more balanced approach. That approach culminated in a six-bill package that was signed by Governor Schwarzenegger on October 10. The center-piece of this package was SB 5 (Machado), a measure which was supported by both CBIA and environmental groups. SB 5 establishes a comprehensive, systemwide approach to flood protection in the central valley, including the Delta. The legislation also establishes higher standards of flood protection for urban and urbanizing areas.³

² See e.g., AB 5 (Wolk); AB 1220 (Jones); AB 1528 (Jones) and AB 1899 (Wolk).

³ The Third Draft at p. 20 also calls for the adoption of differing standards for levels of protections afforded by levees.

These heavily populated areas will need to achieve a 200-year level of flood protection over time.⁴

SB 5 proceeds in an orderly fashion within the framework of existing land use law. It establishes the duties of the state and local governments by requiring the Department of Water Resources (DWR) to develop the Central Valley Flood Protection Plan (CVFPP). Local governments must conform their land use decisions to the CVFPP. DWR will provide information regarding the current status of flood protection facilities in the Sacramento-San Joaquin Valley and DWR must recommend specific measures to improve flood control facilities. The status and recommended improvements must take into consideration seismic risk and impacts due to climate change as called for by the Third Draft.⁵

After the CVFPP is developed, local governments must incorporate the information contained in the CVFPP into their general plans and amend their local zoning ordinances to be consistent with local general plans.⁶ After all of these steps have been completed, new development permits may not be issued unless they can demonstrate any of the following: (1) the project has already achieved the applicable level of flood protection, (2) conditions have been imposed on the project approval that will eventually result in the applicable level of flood protection, or (3) adequate progress is being made towards achievement of the applicable level of flood protection.⁷ All of these provisions adequately tie land use decisions to flood risks without the regulatory encroachment of a moratorium.

The Near Term Actions document calls for changing building codes to require exits to a buildings roof from the inside (p. 4). SB 5 has already addressed this by calling for a proposal to update building codes for flood risks consistent with the provisions of SB 5.⁸

The Third Draft calls for a consideration of liability in connection with land use decisions. Here again, the Legislature and Governor Schwarzenegger have already addressed this issue with the enactment of AB 70 (Jones). AB 70 imposes shared liability on local governments if they approve new development without considering and mitigating flood risks.

Accordingly, we respectfully request that all references to land use restrictions be removed from the documents. The battle over tying land use decisions to flood risks

⁴ See e.g., Government Code §§ 65007(i), (j), and (k), 65865.5, 65962, 66474.5, and Water Code §§ 9614(i) and 9616(a)(6).

⁵ See Government Code §9613.

⁶ See Government Code §§ 65302.9 and 65860.1.

⁷ See Government Code §§ 65865.5, 65962, and 66474.5.

⁸ See Health & Safety Code § 50465.

Hon. Phillip Isenberg, Chairman

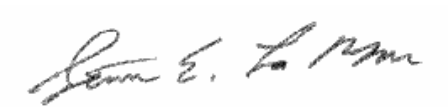
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was a long and very contentions effort. Those issues have now been resolved and should be given a chance to work. The very significant state land use policy changes proposed in the Third Draft and Near Term Actions item should not be adopted after a holiday-week release and very limited opportunity for public review, input and debate.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven E. LaMar". The signature is written in a cursive, flowing style.

Steven E. LaMar

Chair

CBIA's Water Resources Subcommittee

Member, Stakeholders Coordination Committee